



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

RPS920000049US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on March 13, 2006

Signature

Typed or printed name Wanda Kellar

Application Number

09/933,237

Filed

8/20/2001

First Named Inventor

Abrams

Art Unit

2132

Examiner

Grigory Gurshman

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 47,159☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

Robert A. Voigt, Jr.

Typed or printed name

512.370.2832

Telephone number

March 13, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Abrams, Roger Kenneth

Serial No.: 09/933,237

Filed: August 20, 2001

Group Art Unit: 2132

Confirmation No.: 5556

Before the Examiner: Grigory Gurshman

Title: ADDITIONAL LAYER IN OPERATING SYSTEM TO PROTECT  
SYSTEM FROM HACKING

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program initiated on July 12, 2005, Applicants are requesting a review in response to the Examiner's Advisory Action dated January 30, 2006, and are filing a Notice of Appeal concurrently herewith. This paper is responsive to the Final Office Action dated October 25, 2005, having a shortened statutory period expiring on January 25, 2006, but extended to March 25, 2006 by a two-month Petition for Extension of Time.

---

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 13, 2006.

  
Signature

Wanda Kellar  
(Printed name of person certifying)

I. REFERENCE TO REPLY UNDER 37 C.F.R. §1.116

Applicant has submitted a detailed reply on 01/17/2006 to the Examiner's Final Rejection mailed on 10/25/2006, requesting reconsideration of the final rejection. Applicant will refer to this paper as the Reply from 01/17/2006 in this paper. Applicant will refer to the previously submitted paper in response to the Examiner's Office Action from 06/28/2005 as the Reply from 08/19/2005.

II. REGARDING THE EXAMINER'S ADVISORY ACTION

Applicant respectfully asserts that the Examiner has not properly relied upon factual subject matter in construing the Final Rejection and has consistently squelched, absent justification or reasoning, Applicant's detailed clarification of the subject matter cited in the primary and secondary references. The deficiency in the standard for examination in this application to date is evidenced by the Examiner's unwillingness or inability to either further elaborate on the grounds of the present rejections (as Applicant has attempted in good faith for advancing prosecution), or to provide counterarguments to Applicant's specific rebuttals which Applicant has supported with factual information. Instead the Examiner has merely repeated the same cursory, inaccurate grounds for rejection since the first Office Action and has given no indication of having taken the time and effort to actually understand the underlying subject matter pertinent to the present claims. The following remarks elaborate on the clear deficiencies in the Examiner's *prima facie* case in support of the rejection.

One fundamental issue in regard to independent claims 1, 10, and 19 relates in particular to the latter two method steps, as represented by claim 1:

1. A method for preventing a hacker from performing unwanted activities in a computer system comprising the steps of:

receiving a request to provide a service from a user;

determining if said request was transmitted from a user space or a kernel space of a memory space of said computer system, wherein if said request was transmitted from said user space then said user is an unauthenticated user; and

determining if said request from said unauthenticated user fails to satisfy a security requirement for unauthenticated requests, wherein if said request from said unauthenticated user fails to satisfy said security requirement for unauthenticated requests then said request is not serviced.

Applicant notes that the emphasized claim limitations provide for two distinct and logically ordered, i.e., successive, method steps.

Regarding the method step of "determining if said request was transmitted from a user space or a kernel space..." the Examiner has provided no further elaboration of the rejection other than maintaining that Figures 5A and 5B of *Ogawa* meet this claim limitation. Applicant has provided detailed factual arguments that explain why *Ogawa* does not meet this claim limitation. See Reply from 08/19/2005, p. 9, lines 1-21; Reply from 01/17/2006, p. 3, lines 1-17. Applicant reiterates that simply accepting a request from a user process (i.e., in user space), as disclosed in *Ogawa*, does not anticipate or suggest "determining if said request was transmitted from a user space or a kernel space...." The claim limitation clearly requires a determination, i.e., a decision-making step, that is not present in *Ogawa*. If such a determination step were present in *Ogawa*, then it would require a corresponding decision element in Figure 4, which describes the process in Figures 5A and 5B of *Ogawa*. Further, the determination step suggesting this claim limitation would necessarily require the receipt of requests from kernel space and from user space, in order to make the determination. However, there is no teaching or suggestion of such a decision-making step in *Ogawa*, and *Ogawa* exclusively teaches receiving requests from a user space. The only decision-making steps in Figure 4 of *Ogawa* pertain to if the list is empty or if an element in the list is unprocessed. Neither has the Examiner been willing or able to provide any further factual elaboration why or how or what feature of Figures 5A and 5B in *Ogawa* meet the claim limitation of "determining if said request was transmitted from a user space or a kernel space...."

Further regarding the method step of "determining if said request from said unauthenticated user fails to satisfy a security requirement ...," the Examiner maintains that "*Ogawa* teaches that requests are analyzed and are not processed if they do not match the request list (see Fig. 5 and 9)." Applicant respectfully disagrees and maintains that there is no factual basis in *Ogawa* supporting the Examiner's statement. Applicant has previously provided detailed arguments why Figures 5 and 9 in *Ogawa* do not contain the subject matter asserted by the Examiner. See Reply from

08/19/2005, p. 9, line 22 to p. 10, line 3; Reply from 01/17/2006, p. 3, lines 1-17. There is no such determination step, comparing a request to a security requirement, in *Ogawa*, and all determination steps in *Ogawa* fail to meet or suggest this step. There is no mention in *Ogawa* of analyzing requests, and not processing requests if they do not match the request list. There is no mention in *Ogawa* of a security requirement. As a simple text search of *Ogawa* reveals, there is no single mention in *Ogawa* of the terms 'security', 'analyz[e]', 'analysis'. Neither has the Examiner been willing or able to provide any further elaboration why or how or what feature of Figures 5 and 9 in *Ogawa* meet the claim limitation of "determining if said request from said unauthenticated user fails to satisfy a security requirement ...."

Further regarding claim 19, there is simply no factual support in *Ogawa* for the Examiner's citation that "The request is not processed (see Fig. 2) and kernel is notified based on the invalid value (see Fig. 5)." In Figure 2, the management of the request list is shown with the states "COMPLETED", "BEING PROCESSED", "UNPROCESSED" for the successive elements in the list. Clearly 'unprocessed' in this context means not yet processed, and does not teach or suggest 'not processing' a request in terms of denial of a request. A simple text search of *Ogawa* reveals that there is no single instance in *Ogawa* of the terms 'not processed' or 'invalid'.

As a result of the foregoing, Applicant respectfully asserts that the Examiner is misstating the factual subject matter in *Ogawa* and that the Examiner's rejection is in error.

Further in regard to the Examiner's usage of the term "user kernel," Applicant respectfully disagrees with the Examiner's reasoning in item 3. of the Advisory Action that "user kernel" is mentioned in the specification. Instead of providing an elaboration or meaningful justification of why this term has been construed in the rejection (and what this term actually means in relation to the present subject matter), the Examiner maintains that since "user space" and "kernel space" are separately mentioned, that a new term "user kernel" can be considered a part of the specification.

Regarding the motivation to combine *Ogawa* with *Willman*, Applicant reiterates previous arguments which illuminate factual deficiencies in the Examiner's reasoning. See Reply from 08/19/2005, p. 11, line 15 to p. 12, line 16.

III. CONCLUSION

For the reasons stated in Applicant's Reply from 01/17/2006 and noted above, Applicant respectfully asserts that the rejections of claims 1-27 are in error. Applicant requests a pre-appeal review conference be held to reconsider the Final Rejection. Applicant respectfully requests reversal of the rejections and allowance of claims 1-27.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Appellant

Date: March 13, 2006

By: \_\_\_\_\_



Kelly K. Kordzik  
Reg. No. 36,571  
Robert A. Voigt  
Reg. No. 47,159

P.O. Box 50784  
Dallas, Texas 75201  
(512) 370-2832

Austin\_1\307285\1  
44458-P005US 3/13/2006